

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

# HOUSE BILL 2621

AN ACT

AMENDING SECTIONS 4-101, 4-209, 4-213 AND 4-311, ARIZONA REVISED STATUTES;  
AMENDING LAWS 2005, CHAPTER 284, SECTION 15; MAKING AN APPROPRIATION;  
RELATING TO SPIRITUOUS LIQUOR.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 4-101, Arizona Revised Statutes, is amended to  
3 read:

4 4-101. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Act of violence" means an incident consisting of a riot, a brawl  
7 or a disturbance, in which bodily injuries are sustained by any person and  
8 such injuries would be obvious to a reasonable person, or tumultuous conduct  
9 of sufficient intensity as to require the intervention of a peace officer to  
10 restore normal order, or an incident in which a weapon is brandished,  
11 displayed or used. Act of violence does not include the use of nonlethal  
12 devices by a peace officer.

13 2. "Aggrieved party" means a person who resides at, owns or leases  
14 property within a one mile radius of a premises proposed to be licensed and  
15 who filed a written request with the department to speak in favor of or  
16 opposition to the issuance of the license no later than sixty days after the  
17 filing of the application or fifteen days after action by the local governing  
18 body, whichever is later.

19 3. "Beer" means any beverage obtained by the alcoholic fermentation,  
20 infusion or decoction of barley malt, hops, or other ingredients not  
21 drinkable, or any combination of them.

22 4. "Board" means the state liquor board.

23 5. "Bona fide guest" means:

24 (a) A person who is actually a houseguest or a person whose presence  
25 as a guest is in response to a specific and personal invitation.

26 (b) In the case of a club that meets the criteria prescribed in  
27 paragraph 7, subdivision (a) of this section, a current member of the armed  
28 services of the United States who presents proper military identification and  
29 any member of a recognized veterans' organization of THE UNITED STATES AND OF  
30 any country allied with the United States during current or past wars or  
31 through treaty arrangements.

32 6. "Broken package" means any container of spirituous liquor on which  
33 the United States tax seal has been broken or removed, or from which the cap,  
34 cork or seal placed thereupon by the manufacturer has been removed.

35 7. "Club" includes any of the following organizations where the sale  
36 of spirituous liquor for consumption on the premises is made to members only:

37 (a) A post, chapter, camp or other local unit composed solely of  
38 veterans and its duly recognized auxiliary which has been chartered by the  
39 Congress of the United States for patriotic, fraternal or benevolent purposes  
40 and which has, as the owner, lessee or occupant, operated an establishment  
41 for that purpose in this state.

42 (b) A chapter, aerie, parlor, lodge or other local unit of an American  
43 national fraternal organization which has as the owner, lessee or occupant  
44 operated an establishment for fraternal purposes in this state. An American  
45 national fraternal organization as used in this subdivision shall actively

1 operate in not less than thirty-six states or have been in active continuous  
2 existence for not less than twenty years.

3 (c) A hall or building association of a local unit mentioned in  
4 subdivisions (a) and (b) of this paragraph, all of the capital stock of which  
5 is owned by the local unit or the members, and which operates the clubroom  
6 facilities of the local unit.

7 (d) A golf club which has more than fifty bona fide members and which  
8 owns, maintains or operates a bona fide golf links together with a clubhouse.

9 (e) A social club with more than one hundred bona fide members who are  
10 actual residents of the county in which it is located, that owns, maintains  
11 or operates club quarters, is authorized and incorporated to operate as a  
12 nonprofit club under the laws of this state, and has been continuously  
13 incorporated and operating for a period of not less than one year. The club  
14 shall have had, during this one year period, a bona fide membership with  
15 regular meetings conducted at least once each month, and the membership shall  
16 be and shall have been actively engaged in carrying out the objects of the  
17 club. The club's membership shall consist of bona fide dues paying members  
18 paying at least six dollars per year, payable monthly, quarterly or annually,  
19 which have been recorded by the secretary of the club, and the members at the  
20 time of application for a club license shall be in good standing having for  
21 at least one full year paid dues. At least fifty-one per cent of the members  
22 shall have signified their intention to secure a social club license by  
23 personally signing a petition, on a form prescribed by the board, which shall  
24 also include the correct mailing address of each signer. The petition shall  
25 not have been signed by a member at a date earlier than thirty days prior to  
26 the filing of the petition. The club shall qualify for exemption from the  
27 payment of state income taxes under title 43. It is the intent of this  
28 paragraph that a license shall not be granted to a club which is, or has  
29 been, primarily formed or activated to obtain a license to sell liquor, but  
30 solely to a bona fide club, where the sale of liquor is incidental to the  
31 main purposes of the club.

32 (f) An airline club operated by or for airlines which are certificated  
33 by the United States government and which maintain or operate club quarters  
34 located at airports with international status.

35 8. "Company" or "association", when used in reference to a  
36 corporation, includes successors or assigns.

37 9. "Control" means the power to direct or cause the direction of the  
38 management and policies of an applicant, licensee or controlling person,  
39 whether through the ownership of voting securities or a partnership interest,  
40 by agreement or otherwise. Control is presumed to exist if a person has the  
41 direct or indirect ownership of or power to vote ten per cent or more of the  
42 outstanding voting securities of the applicant, licensee or controlling  
43 person or to control in any manner the election of one or more of the  
44 directors of the applicant, licensee or controlling person. In the case of a  
45 partnership, control is presumed to mean the general partner or a limited

1 partner who holds ten per cent or more of the voting rights of the  
2 partnership. For the purposes of determining the percentage of voting  
3 securities owned, controlled or held by a person, there shall be aggregated  
4 with the voting securities attributed to the person the voting securities of  
5 any other person directly or indirectly controlling, controlled by or under  
6 common control with the other person, or by an officer, partner, employee or  
7 agent of the person or by a spouse, parent or child of the person. Control  
8 is also presumed to exist if a creditor of the applicant, licensee or  
9 controlling person holds a beneficial interest in ten per cent or more of the  
10 liabilities of the licensee or controlling person.

11 10. "Controlling person" means a person directly or indirectly  
12 possessing control of an applicant or licensee.

13 11. "Department" means the department of liquor licenses and control.

14 12. "Director" means the director of the department of liquor licenses  
15 and control.

16 13. "Distilled spirits" includes alcohol, brandy, whiskey, rum,  
17 tequila, mescal, gin, absinthe, a compound or mixture of any of them or of  
18 any of them with any vegetable or other substance, alcohol bitters, bitters  
19 containing alcohol, fruits preserved in ardent spirits, and any alcoholic  
20 mixture or preparation, whether patented or otherwise, which may in  
21 sufficient quantities produce intoxication.

22 14. "Employee" means any person who performs any service on licensed  
23 premises on a full-time, part-time or contract basis with consent of the  
24 licensee, whether or not the person is denominated an employee, independent  
25 contractor or otherwise. Employee does not include a person exclusively on  
26 the premises for musical or vocal performances, for repair or maintenance of  
27 the premises or for the delivery of goods to the licensee.

28 15. "Government license" means a license to serve and sell spirituous  
29 liquor on specified premises available only to a county, city, town or state  
30 university or the Arizona coliseum and exposition center upon application by  
31 the governing body of a county, city, town or state university or the Arizona  
32 exposition and state fair board.

33 16. "Legal drinking age" means the age of twenty-one years or older.

34 17. "License" means a license or an interim retail permit issued  
35 pursuant to the provisions of this title.

36 18. "License fees" means fees collected for license issuance, license  
37 application, license renewal, interim permit issuance and license transfer  
38 between persons or locations.

39 19. "Licensee" means a person who has been issued a license or an  
40 interim retail permit pursuant to the provisions of this title or a special  
41 event licensee.

42 20. "Manager" means a natural person who meets the standards required  
43 of licensees and has authority to organize, direct, carry on, control or  
44 otherwise operate a licensed business on a temporary or full-time basis.

1       21. "Off-sale retailer" means any person operating a bona fide  
2 regularly established retail liquor store selling spirituous liquors, wines  
3 and beer, and any established retail store selling commodities other than  
4 spirituous liquors and engaged in the sale of spirituous liquors only in the  
5 original unbroken package, to be taken away from the premises of the retailer  
6 and to be consumed off the premises.

7       22. "On-sale retailer" means any person operating an establishment  
8 where spirituous liquors are sold in the original container for consumption  
9 on or off the premises or in individual portions for consumption on the  
10 premises.

11       23. "Person" includes a partnership, limited liability company,  
12 association, company or corporation, as well as a natural person.

13       24. "Premises" or "licensed premises" means the area from which the  
14 licensee is authorized to sell, dispense or serve spirituous liquors under  
15 the provision of the license.

16       25. "Registered mail" includes certified mail.

17       26. "Registered retail agent" means any person who is authorized  
18 pursuant to section 4-222 to purchase spirituous liquors for and on behalf of  
19 himself and other retail licensees.

20       27. "Repeated acts of violence" means two or more acts of violence  
21 occurring within seven days, three or more acts of violence occurring within  
22 thirty days or acts of violence occurring with any other similar frequency  
23 which the director determines to be unusual or deserving of review.

24       28. "Sell" includes soliciting or receiving an order for, keeping or  
25 exposing for sale, directly or indirectly delivering for value, peddling,  
26 keeping with intent to sell and trafficking in.

27       29. "Spirituous liquor" includes alcohol, brandy, whiskey, rum,  
28 tequila, mescal, gin, wine, porter, ale, beer, any malt liquor or malt  
29 beverage, absinthe, a compound or mixture of any of them or of any of them  
30 with any vegetable or other substance, alcohol bitters, bitters containing  
31 alcohol, any liquid mixture or preparation, whether patented or otherwise,  
32 which produces intoxication, fruits preserved in ardent spirits, and  
33 beverages containing more than one-half of one per cent of alcohol by volume.

34       30. "Vehicle" means any means of transportation by land, water or air,  
35 and includes everything made use of in any way for such transportation.

36       31. "Vending machine" means a machine that dispenses merchandise  
37 through the means of coin, token, credit card or other nonpersonal means of  
38 accepting payment for merchandise received.

39       32. "Veteran" means a person who has served in the United States air  
40 force, army, navy, marine corps or coast guard, as an active nurse in the  
41 services of the American red cross, in the army and navy nurse corps in time  
42 of war, or in any expedition of the armed forces of the United States, and  
43 who has received a discharge other than dishonorable.

1       33. "Voting security" means any security presently entitling the owner  
2 or holder of the security to vote for the election of directors of an  
3 applicant, licensee or controlling person.

4       34. "Wine" means the product obtained by the fermentation of grapes or  
5 other agricultural products containing natural or added sugar or any such  
6 alcoholic beverage fortified with grape brandy and containing not more than  
7 twenty-four per cent of alcohol by volume.

8       Sec. 2. Section 4-209, Arizona Revised Statutes, is amended to read:

9       4-209. Fees for license, application, issuance, renewal and  
10       transfer; late renewal penalty; seasonal operation;  
11       surcharges

12       A. A fee shall accompany an application for an original license or  
13 transfer of a license, or in case of renewal, shall be paid in advance.  
14 Every license expires annually. A licensee who fails to renew the license on  
15 or before the due date shall pay a penalty of one hundred fifty dollars which  
16 the licensee shall pay with the renewal fee. A license renewal that is  
17 deposited, properly addressed and postage prepaid in an official depository  
18 of the United States mail on or before the due date shall be deemed filed and  
19 received by the department on the date shown by the postmark or other  
20 official mark of the United States postal service stamped on the envelope.  
21 If the due date falls on a Saturday, Sunday or other legal holiday, the  
22 renewal shall be considered timely if it is received by the department on the  
23 next business day. The director may waive a late renewal penalty if good  
24 cause is shown by the licensee. A licensee who fails to renew the license on  
25 or before the due date may not sell, purchase or otherwise deal in spirituous  
26 liquor until the license is renewed. A license which is not renewed within  
27 sixty days after the due date is deemed terminated. The director may renew  
28 the terminated license if good cause is shown by the licensee. An  
29 application fee for an original license or the transfer of a license shall be  
30 one hundred dollars, which shall be retained by this state.

31       B. Issuance fees for original licenses shall be:

32       1. For an in-state producer's license, to manufacture or produce  
33 spirituous liquor in this state, one thousand five hundred dollars.

34       2. Except as provided in paragraph 15 of this subsection, for an  
35 out-of-state producer's, exporter's, importer's or rectifier's license, two  
36 hundred dollars.

37       3. For a domestic microbrewery license, three hundred dollars.

38       4. For a wholesaler's license, to sell spirituous liquors, one  
39 thousand five hundred dollars.

40       5. For a government license issued in the name of a county, city or  
41 town, one hundred dollars.

42       6. For a bar license, which is an on-sale retailer's license to sell  
43 all spirituous liquors primarily by individual portions and in the original  
44 containers, one thousand five hundred dollars.

1           7. For a beer and wine bar license, which is an on-sale retailer's  
2 license to sell beer and wine primarily by individual portions and in the  
3 original containers, one thousand five hundred dollars.

4           8. For a conveyance license issued to an operating railroad company,  
5 to sell all spirituous liquors in individual portions or in the original  
6 containers on all passenger trains operated by the railroad company, or to an  
7 operating airline company, to sell or serve spirituous liquors solely in  
8 individual portions on all passenger planes operated by the airline company,  
9 or to a boat operating in the waters of this state, to sell all spirituous  
10 liquors in individual portions or in the original containers for consumption  
11 on the boat, one thousand five hundred dollars.

12           9. For a liquor store license, which is an off-sale retailer's license  
13 to sell all spirituous liquors, one thousand five hundred dollars.

14           10. For a beer and wine store license, which is an off-sale retailer's  
15 license to sell beer and wine, one thousand five hundred dollars.

16           11. For a hotel-motel license issued as such, to sell and serve  
17 spirituous liquors solely for consumption on the licensed premises of the  
18 hotel or motel, one thousand five hundred dollars.

19           12. For a restaurant license issued as such, to sell and serve  
20 spirituous liquors solely for consumption on the licensed premises of the  
21 restaurant, one thousand five hundred dollars.

22           13. For a domestic farm winery license, one hundred dollars.

23           14. For a club license issued in the name of a bona fide club qualified  
24 under this title to sell all spirituous liquors on-sale, one thousand  
25 dollars.

26           15. For an out-of-state winery that sells not more than fifty cases of  
27 wine in this state in a calendar year, twenty-five dollars.

28           C. The department may issue licenses with staggered renewal dates to  
29 distribute the renewal ~~work-load~~ **WORKLOAD** as uniformly as practicable  
30 throughout the twelve months of the calendar year. If a license is issued  
31 less than six months before the scheduled renewal date of the license, as  
32 provided by the department's staggered license renewal system, one-half of  
33 the annual license fee shall be charged.

34           D. The annual fees for licenses shall be:

35           1. For an in-state producer's license, to manufacture or produce  
36 spirituous liquors in this state, three hundred fifty dollars.

37           2. Except as provided in paragraph 15 of this subsection, for an  
38 out-of-state producer's, exporter's, importer's or rectifier's license, fifty  
39 dollars.

40           3. For a domestic microbrewery license, three hundred dollars.

41           4. For a wholesaler's license, to sell spirituous liquors, two hundred  
42 fifty dollars.

43           5. For a government license issued to a county, city or town, one  
44 hundred dollars.

1           6. For a bar license, which is an on-sale retailer's license to sell  
2 all spirituous liquors primarily by individual portions and in the original  
3 containers, one hundred fifty dollars.

4           7. For a beer and wine bar license, which is an on-sale retailer's  
5 license to sell beer and wine primarily by individual portions and in the  
6 original containers, seventy-five dollars.

7           8. For a conveyance license issued to an operating railroad company,  
8 to sell all spirituous liquors in individual portions or in the original  
9 containers on all passenger trains operated by the railroad company, or to an  
10 operating airline company, to sell or serve spirituous liquors solely in  
11 individual portions on all passenger planes operated by the airline company,  
12 or to a boat operating in the waters of this state, to sell all spirituous  
13 liquor in individual portions or in the original containers for consumption  
14 on the boat, two hundred twenty-five dollars.

15           9. For a liquor store license, which is an off-sale retailer's license  
16 to sell all spirituous liquors, fifty dollars.

17           10. For a beer and wine store license, which is an off-sale retailer's  
18 license to sell beer and wine, fifty dollars.

19           11. For a hotel-motel license issued as such, to sell and serve  
20 spirituous liquors solely for consumption on the licensed premises of the  
21 hotel or motel, five hundred dollars.

22           12. For a restaurant license issued as such, to sell and serve  
23 spirituous liquors solely for consumption on the licensed premises of the  
24 restaurant, five hundred dollars, AND FOR A RESTAURANT LICENSE THAT IS  
25 PERMITTED TO CONTINUE OPERATING AS A RESTAURANT PURSUANT TO SECTION 4-213,  
26 SUBSECTION E, AN ADDITIONAL AMOUNT ESTABLISHED BY THE DIRECTOR. THE  
27 DEPARTMENT SHALL TRANSFER THIS AMOUNT TO THE STATE TREASURER FOR DEPOSIT IN  
28 THE STATE GENERAL FUND.

29           13. For a domestic farm winery license, one hundred dollars.

30           14. For a club license issued in the name of a bona fide club qualified  
31 under this title to sell all spirituous liquors on-sale, one hundred fifty  
32 dollars.

33           15. For an out-of-state winery that sells not more than twenty-five  
34 cases of wine in this state in a calendar year, twenty-five dollars.

35           E. Where the business of an on-sale retail licensee is seasonal, not  
36 extending over periods of more than six months in any calendar year, the  
37 licensee may designate the periods of operation, and a license may be granted  
38 for those periods only, upon payment of one-half of the fee prescribed in  
39 subsection D of this section.

40           F. Transfer fees from person to person for licenses transferred  
41 pursuant to section 4-203, subsection C shall be three hundred dollars.

42           G. Transfer fees from location to location, as provided for in section  
43 4-203, shall be one hundred dollars.

44           H. Assignment fees for a change of agent, as provided for in section  
45 4-202, subsection C, shall be one hundred dollars, except that where a



1 licensee holds multiple licenses the assignment fee for the first license  
2 shall be one hundred dollars and the assignment fee for all remaining  
3 licenses transferred to the same agent shall be fifty dollars each, except  
4 that the aggregate assignment fees shall in no event exceed one thousand  
5 dollars.

6 I. No fee shall be charged by the department for an assignment of a  
7 liquor license in probate or an assignment pursuant to the provisions of a  
8 will or pursuant to a judicial decree in a domestic relations proceeding  
9 which assigns ownership of a business which includes a spirituous liquor  
10 license to one of the parties in the proceeding. In the case of  
11 nontransferable licenses no fee shall be charged by the department for the  
12 issuance of a license for a licensed business pursuant to a transfer of the  
13 business in probate or pursuant to the provisions of a will or pursuant to a  
14 judicial decree in a domestic relations proceeding which assigns ownership of  
15 the business to one of the parties in the proceeding.

16 J. The director shall assess a surcharge of thirty dollars on all  
17 licenses prescribed in subsection D, paragraphs 6, 7 and 12 of this section.  
18 Monies from the surcharge shall be used by the department exclusively for the  
19 costs of an auditor and support staff to review compliance by applicants and  
20 licensees with the requirements of section 4-205.02, subsection E. The  
21 department shall assess the surcharge as part of the annual license renewal  
22 fee.

23 K. The director shall assess a surcharge of thirty-five dollars on all  
24 licenses prescribed in this section. Monies from the surcharge shall be used  
25 by the department exclusively for the costs of an enforcement program to  
26 investigate licensees who have been the subject of multiple complaints to the  
27 department. The enforcement program shall respond to complaints against  
28 licensees by neighborhood associations, by neighborhood civic groups and from  
29 municipal and county governments. The department shall assess the surcharge  
30 as part of the annual license renewal fee.

31 L. The director shall assess a surcharge of twenty dollars on all  
32 licenses prescribed in subsection D, paragraphs 11 and 12 of this section and  
33 thirty-five dollars on all other licenses prescribed in this section. Monies  
34 from the surcharge and from surcharges imposed pursuant to subsection K of  
35 this section shall be used by the department exclusively for the costs of a  
36 neighborhood association interaction and liquor enforcement management unit.  
37 The unit shall respond to complaints from neighborhood associations,  
38 neighborhood civic groups and local governing authorities regarding liquor  
39 violations. The director shall report the unit's activities to the board at  
40 each board meeting or as the board may direct.

41 Sec. 3. Section 4-213, Arizona Revised Statutes, is amended to read:

42 4-213. Restaurant audit

43 A. The director may require a restaurant to submit an audit of its  
44 records to demonstrate compliance with section 4-205.02. The director shall  
45 not require AN ESTABLISHMENT TO SUBMIT TO such an audit more than once a year

1 after the initial twelve months of operation EVEN IF THE ESTABLISHMENT IS  
2 ALLOWED TO CONTINUE OPERATING AS A RESTAURANT PURSUANT TO SUBSECTION E OF  
3 THIS SECTION.

4 B. Except as provided in subsection D of this section, the department  
5 shall audit accounts, records and operations of a licensee that cover a  
6 twelve month period. An establishment that averages at least forty per cent  
7 of its gross revenue from the sale of food during the twelve month audit  
8 period shall be deemed to comply with the gross revenue requirements of  
9 section 4-205.02. The twelve month audit period shall fall within the  
10 sixteen months immediately preceding the beginning of the audit.

11 C. If the audit OR A CONSENT AGREEMENT THAT MAY BE OFFERED AT THE  
12 DISCRETION OF THE DIRECTOR AND THAT IS SIGNED BY THE LICENSEE AND THE  
13 DIRECTOR reveals that the licensee did not meet the definition of a  
14 restaurant as prescribed in section 4-205.02 AND THE PERCENTAGE OF FOOD SALES  
15 DETERMINED BY THE AUDIT OR CONSENT AGREEMENT WAS:

16 1. LESS THAN THIRTY PER CENT, the department shall revoke the license.

17 2. AT LEAST THIRTY PER CENT BUT LESS THAN THIRTY-SEVEN PER CENT, THE  
18 DEPARTMENT SHALL ALLOW THE LICENSEE A SIX MONTH PERIOD TO EITHER:

19 (a) REPLACE THE LICENSE WITH A BAR OR BEER AND WINE BAR LICENSE,  
20 EXCEPT THAT, AT THE END OF THAT SIX MONTH PERIOD, THE DEPARTMENT SHALL REVOKE  
21 THE RESTAURANT LICENSE OR THE LICENSEE SHALL SURRENDER THE RESTAURANT  
22 LICENSE.

23 (b) OBTAIN PERMISSION FROM THE DEPARTMENT TO CONTINUE OPERATING WITH A  
24 RESTAURANT LICENSE PURSUANT TO SUBSECTION E OF THIS SECTION.

25 3. AT LEAST THIRTY-SEVEN PER CENT BUT LESS THAN FORTY PER CENT, THE  
26 LICENSEE SHALL BE GRANTED A PERIOD OF ONE YEAR TO INCREASE THE FOOD  
27 PERCENTAGE TO AT LEAST FORTY PER CENT. IF THE LICENSEE DOES NOT INCREASE THE  
28 PERCENTAGE OF FOOD SALES TO AT LEAST FORTY PER CENT, THE DEPARTMENT SHALL  
29 ALLOW THE LICENSEE A SIX MONTH PERIOD TO EITHER:

30 (a) REPLACE THE LICENSE WITH A BAR OR BEER AND WINE BAR LICENSE,  
31 EXCEPT THAT, AT THE END OF THE SIX MONTH PERIOD, THE DEPARTMENT SHALL REVOKE  
32 THE RESTAURANT LICENSE OR THE LICENSEE SHALL SURRENDER THE RESTAURANT  
33 LICENSE.

34 (b) OBTAIN PERMISSION FROM THE DEPARTMENT TO CONTINUE OPERATING WITH A  
35 RESTAURANT LICENSE PURSUANT TO SUBSECTION E OF THIS SECTION.

36 D. The department may conduct an audit of a licensee described in  
37 section 4-209, subsection B, paragraph 12 after twelve months following the  
38 beginning of operations as a restaurant by the licensee to determine  
39 compliance by the licensee with section 4-205.02, except that the department  
40 may conduct an audit of a licensee within the first twelve months of  
41 operation if the licensee has made a substantial modification in the  
42 restaurant equipment, service or entertainment items or seating capacity  
43 during that twelve month period, in which event the department may conduct  
44 the audit for a period of less than twelve months.

1 E. A RESTAURANT LICENSEE MAY CONTINUE TO OPERATE WITH ITS RESTAURANT  
2 LICENSE IF ITS FOOD SALES ARE AT LEAST THIRTY PER CENT AND LESS THAN FORTY  
3 PER CENT AND THE DEPARTMENT APPROVES THE CONTINUATION OF THE RESTAURANT  
4 LICENSE PURSUANT TO THIS SUBSECTION AND SUBSECTIONS C, F, G, H AND I OF THIS  
5 SECTION. THE DEPARTMENT SHALL NOT APPROVE MORE THAN FIFTEEN RESTAURANT  
6 LICENSES PURSUANT TO THIS SUBSECTION AND SUBSECTIONS C, F, G, H AND I OF THIS  
7 SECTION IN EACH OF THE FISCAL YEARS 2006-2007 AND 2007-2008. THE DEPARTMENT  
8 SHALL NOT APPROVE ANY ADDITIONAL LICENSES PURSUANT TO THIS SUBSECTION AND  
9 SUBSECTIONS C, F, G, H AND I OF THIS SECTION FROM CONSENT AGREEMENTS ENTERED  
10 INTO OR AUDITS CONDUCTED IN ANY FISCAL YEAR AFTER 2007-2008. THE DEPARTMENT  
11 MAY APPROVE A REQUEST SUBMITTED BY THE LICENSEE TO CONTINUE TO OPERATE WITH  
12 ITS RESTAURANT LICENSE ONLY IF ALL OF THE FOLLOWING APPLY AT THE TIME THE  
13 LICENSEE FILES ITS REQUEST WITH THE DEPARTMENT:

14 1. THE RESTAURANT HAS A SUFFICIENT NUMBER OF COOKS, FOOD PREPARATION  
15 PERSONNEL AND WAIT STAFF TO PREPARE AND PROVIDE THE RESTAURANT SERVICES THAT  
16 ARE NECESSARY FOR THE MENU OFFERED BY THE LICENSEE.

17 2. THE RESTAURANT'S EQUIPMENT IS OF A SUFFICIENT GRADE AND THE SIZE OF  
18 THE RESTAURANT'S KITCHEN IS APPROPRIATE TO THE MENU OFFERED AND THE KITCHEN  
19 OCCUPIES NOT LESS THAN TWENTY PER CENT OF THE TOTAL FLOOR SPACE OF THE  
20 LICENSED PREMISES.

21 3. THE MENU IS OF A TYPE CONSISTENT WITH A RESTAURANT OPERATION. IN  
22 MAKING A DETERMINATION PURSUANT TO THIS PARAGRAPH, THE DEPARTMENT MAY  
23 CONSIDER THE PROPORTION OF FOOD SALES TO ALCOHOL SALES, THE PRICE OF  
24 SPIRITUOUS LIQUOR BEVERAGES AND FOOD SERVED BY THE LICENSEE AND WHETHER THE  
25 LICENSEE PROVIDES REDUCED PRICE OR COMPLIMENTARY FOOD AND BEVERAGES.

26 4. NOT MORE THAN THIRTY PER CENT OF THE PUBLIC INTERIOR AREA FLOOR  
27 SPACE CONSISTS OF POOL TABLES, DART OR ARCADE GAMES, BARSTOOLS, COCKTAIL  
28 TABLES AND SIMILAR TYPES OF SEATING AND DANCE FLOORS, AND THE AGGREGATE AREA  
29 OF ALL DANCE FLOORS ON THE PREMISES IS NOT GREATER THAN TEN PER CENT OF THE  
30 TOTAL FLOOR SPACE OF THE PUBLIC AREA OF THE PREMISES.

31 5. THE NAME OF THE RESTAURANT DOES NOT INCLUDE TERMS ASSOCIATED WITH  
32 ALCOHOL CONSUMPTION, SUCH AS "BAR", "TAVERN", "PUB", "SPIRITS", "CLUB",  
33 "LOUNGE", "CABARET", "CANTINA" OR "SALOON".

34 6. DISPOSABLE DINNERWARE AND SMALLWARE, INCLUDING DINING UTENSILS, ARE  
35 NOT USED EXCEPT IN OUTDOOR AREAS.

36 F. IF THE DEPARTMENT INTENDS TO APPROVE A RESTAURANT'S CONTINUATION OF  
37 OPERATION PURSUANT TO SUBSECTION E OF THIS SECTION:

38 1. THE DEPARTMENT SHALL ADVISE THE GOVERNING BODY OF THE CITY OR TOWN  
39 IF THE PREMISES ARE WITHIN THE INCORPORATED LIMITS OF A CITY OR TOWN OR THE  
40 COUNTY OF THE DEPARTMENT'S INTENT.

41 2. THE CITY OR TOWN OR THE COUNTY SHALL POST A NOTICE FOR AT LEAST  
42 TWENTY DAYS ON THE LICENSED PREMISES THAT THE LICENSEE HAS MADE A REQUEST FOR  
43 CONTINUATION TO OPERATE WITH A RESTAURANT LICENSE AND INVITE BONA FIDE  
44 RESIDENTS WHO OWN, LEASE OR RESIDE ON PROPERTY WITHIN A ONE MILE RADIUS OF

1 THE LICENSED PREMISES TO FILE WRITTEN COMMENTS WITH THE DEPARTMENT REGARDING  
2 THE REQUEST WITHIN THIRTY DAYS OF THE FIRST POSTING OF THE NOTICE.

3 G. IF THE LOCAL JURISDICTION THROUGH ITS GOVERNING BODY OR ITS  
4 AUTHORIZED AGENT DOES NOT OBJECT WITHIN NINETY DAYS, THE LICENSEE MAY  
5 CONTINUE ITS OPERATION AS A RESTAURANT.

6 H. IF THE DEPARTMENT INTENDS TO DISAPPROVE A RESTAURANT'S CONTINUATION  
7 OF OPERATION PURSUANT TO SUBSECTION E OF THIS SECTION, OR IF THE LOCAL  
8 JURISDICTION OR ITS AGENT TIMELY OBJECTS TO ITS CONTINUATION, THE DEPARTMENT  
9 SHALL SET A HEARING BEFORE THE BOARD AND THE LOCAL JURISDICTION SHALL POST A  
10 NOTICE OF THE HEARING FOR A PERIOD OF AT LEAST TWENTY DAYS ON THE LICENSED  
11 PREMISES. THE CITY OR TOWN OR THE COUNTY MAY TESTIFY AT THE HEARING AND BONA  
12 FIDE RESIDENTS WHO OWN, LEASE OR RESIDE ON PROPERTY WITHIN A ONE MILE RADIUS  
13 OF THE LICENSED PREMISES MAY TESTIFY BEFORE THE BOARD REGARDING THE  
14 LICENSEE'S REQUEST. THE BOARD SHALL DETERMINE WHETHER THE RESTAURANT MAY  
15 CONTINUE ITS OPERATION BASED ON CONSIDERATION OF THE CRITERIA LISTED IN  
16 SUBSECTION E OF THIS SECTION.

17 I. A RESTAURANT LICENSEE MAY CONTINUE TO OPERATE WITH ITS RESTAURANT  
18 LICENSE PURSUANT TO SUBSECTION E OF THIS SECTION, IF THE RESTAURANT AND THE  
19 RESTAURANT LICENSEE CONTINUE TO MEET THE REQUIREMENTS OF THIS SUBSECTION,  
20 SUBSECTION E OF THIS SECTION AND ANY OTHER STATUTE. AS A CONDITION OF  
21 CONTINUING OPERATION AS A RESTAURANT UNDER SUBSECTION E OF THIS SECTION, THE  
22 DEPARTMENT MAY REQUIRE THE LICENSEE TO SPECIFICALLY ACKNOWLEDGE THE  
23 REPRESENTATIONS MADE BY THE LICENSEE REGARDING ITS OPERATIONS IN SUPPORT OF  
24 THE LICENSEE'S CONTINUING OPERATION AS A RESTAURANT. NOTWITHSTANDING  
25 SUBSECTION A OF THIS SECTION, IF THE LICENSEE CHANGES ITS OPERATION IN ANY  
26 WAY THAT MATERIALLY AND DETRIMENTALLY AFFECTS THE REPRESENTATIONS MADE BY THE  
27 LICENSEE, THE DEPARTMENT MAY AUDIT THE LICENSEE OR TERMINATE THE LICENSE  
28 WITHOUT AN AUDIT.

29 Sec. 4. Section 4-311, Arizona Revised Statutes, is amended to read:

30 4-311. Liability for serving intoxicated person or minor;  
31 definition

32 A. A licensee is liable for property damage and personal injuries or  
33 is liable to a person who may bring an action for wrongful death pursuant to  
34 section 12-612, **OR BOTH**, if a court or jury finds **ALL OF** the following:

35 1. The licensee sold spirituous liquor either to a purchaser who was  
36 obviously intoxicated, or to a purchaser under the legal drinking age without  
37 requesting identification containing proof of age or with knowledge that the  
38 person was under the legal drinking age. ~~, and~~

39 2. The purchaser consumed the spirituous liquor sold by the licensee.  
40 ~~, and~~

41 3. The consumption of spirituous liquor was a proximate cause of the  
42 injury, death or property damage.

43 B. NO LICENSEE IS CHARGEABLE WITH KNOWLEDGE OF PREVIOUS ACTS BY WHICH  
44 A PERSON BECOMES INTOXICATED AT OTHER LOCATIONS UNKNOWN TO THE LICENSEE  
45 UNLESS THE PERSON WAS OBVIOUSLY INTOXICATED. IF THE LICENSEE OPERATES UNDER

1 A RESTAURANT LICENSE, THE FINDER OF FACT SHALL NOT CONSIDER ANY INFORMATION  
2 OBTAINED AS A RESULT OF A RESTAURANT AUDIT CONDUCTED PURSUANT TO SECTION  
3 4-213 UNLESS THE COURT FINDS THE INFORMATION RELEVANT.

4 ~~B.~~ C. For the purposes of subsection A, paragraph 2 of this section,  
5 if it is found that an underage person purchased spirituous liquor from a  
6 licensee and such underage person incurs or causes injuries or property  
7 damage as a result of the consumption of spirituous liquor within a  
8 reasonable period of time following the sale of the spirituous liquor, it  
9 shall create a rebuttable presumption that the underage person consumed the  
10 spirituous liquor sold to such person by the licensee.

11 ~~C.~~ D. For the purposes of this section, "obviously intoxicated" means  
12 inebriated to such an extent that a person's physical faculties are  
13 substantially impaired and the impairment is shown by significantly  
14 uncoordinated physical action or significant physical dysfunction, ~~—~~ that  
15 would have been obvious to a reasonable person.

16 Sec. 5. Laws 2005, chapter 284, section 15 is amended to read:

17 Sec. 15. Temporary transfers of licenses

18 Between July 1, 2006 and December 31, ~~2007~~ 2008, bar, beer and wine bar  
19 and liquor store licenses may be transferred from counties with a population  
20 of five hundred thousand or more persons to counties with a population of  
21 less than five hundred thousand persons.

22 Sec. 6. Applicability of audit provisions

23 Section 4-213, Arizona Revised Statutes, as amended by this act, does  
24 not apply to any audit or disciplinary action completed or any consent  
25 agreement signed before January 1, 2006.

26 Sec. 7. Reporting requirement

27 The department of liquor licenses and control shall submit a report to  
28 the governor, the president of the senate and the speaker of the house of  
29 representatives on or before November 1, 2007 and shall provide a copy of  
30 this report to the director of the Arizona state library, archives and public  
31 records regarding the impact of sections 4-209 and 4-213, Arizona Revised  
32 Statutes, as amended by this act. The department of liquor licenses and  
33 control shall solicit input from neighborhood groups and local jurisdictions  
34 before issuing the report.

35 Sec. 8. Appropriation; department of liquor licenses and  
36 control

37 The sum of \$450,000 is appropriated from the state general fund in  
38 fiscal year 2006-2007 to the department of liquor licenses and control for  
39 the purpose of hiring three additional investigators and two additional  
40 auditors.